



Committee on Criminal Justice Appropriations

**Monday, April 17, 2006
3:00 pm – 4:00 pm
214 Capitol**

**Allan Bense
Speaker**

**Gustavo Barreiro, CHAIR
Arthenia Joyner, Vice-Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Appropriations Committee

Start Date and Time: Monday, April 17, 2006 03:00 pm

End Date and Time: Monday, April 17, 2006 04:00 pm

Location: 214 Capitol

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 45 CS False or Misleading Electronic Mail by Porth

HB 1239 Child Abuse by Detert

NOTICE FINALIZED on 04/13/2006 16:20 by KAG



Florida House of Representatives

Fiscal Council

Committee on Criminal Justice Appropriations

Allan Bense
Speaker

Gustavo Barreiro
Chair

AGENDA
COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS
TUESDAY, APRIL 17, 2006
3:00pm - 4:00pm
214 Capitol

- I. Roll Call and opening comments by Chairman Barreiro**
- II. Consideration of the following bills:**
 - **HB 45 CS by Porth- False or Misleading Electronic Mail**
 - **HB 1239 by Detert- Child Abuse**
- III. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 45 CS

False or Misleading Electronic Mail

SPONSOR(S): Porth

TIED BILLS:

IDEN./SIM. BILLS: SB 80

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	12 Y, 1 N, w/CS	Cater	Holt
2) Criminal Justice Committee	7 Y, 0 N	Ferguson	Kramer
3) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

HB 45 CS amends the Electronic Mail Communications Act (Act) and creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages. HB 45 CS does the following:

- Amends section 668.606, F.S., to provide immunity from criminal prosecution to an interactive computer service, customer premises equipment provider, communications services provider, or cable provider whose equipment is used to transport, handle, or retransmit a commercial electronic mail message.
- Amends section 668.6075, F.S., to provide that remedies and criminal penalties under the Act are in addition to remedies and criminal penalties otherwise available under federal or state law.
- Creates section 668.608, F.S., to provide that it is a misdemeanor of the first degree or a felony in the third degree under certain circumstances to send an unsolicited false or misleading commercial electronic mail.

The Criminal Justice Impact Conference met on February 28, 2006 and determined that this bill would have an insignificant impact on the inmate population in the Department of Corrections.

This act shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility- HB 45 CS creates criminal penalties for sending false or misleading electronic mail.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Legislation

In 2003, Congress passed the "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003" or the "CAN-SPAM Act of 2003."¹ The CAN-SPAM act provides that if the activity is in or affects interstate or foreign commerce, it is unlawful to knowingly:

- Access a protected computer, as defined in section 1030(e)(2)(B) of Title 18, without authorization, and intentionally initiate the transmission of multiple commercial electronic mail messages from or through the computer.
- Use a protected computer, as defined in section 1030(e)(2)(B) of Title 18, to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages.
- Materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of such messages.
- Register, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names.
- Falsely represent oneself to be the registrant or the legitimate successor in interest to the registrant of five or more Internet Protocol addresses, and intentionally initiate the transmission of multiple commercial electronic mail messages from such addresses.

The CAN-SPAM act specifies the penalties for a violation which may include a fine, imprisonment of up to five years, or both. Additionally, the court may order forfeiture of any property constituting or traceable to gross proceeds obtained from the offense or any equipment used or intended to be used to commit the offense.

State Legislation

In 2004, the Legislature passed The Electronic Mail Communications Act (Act).² Section 668.603, F.S., of the Act provides that a person may not:

- Initiate the transmission of an unsolicited commercial electronic mail message from a computer located in this state or to an electronic mail address that is held by a resident of this state which:
 - Uses a third party's Internet domain name without permission of the third party;

¹ 15 U.S.C. ss. 7701-13.

² Section 668.60, F.S.

- Contains falsified or missing routing information or otherwise misrepresents, falsifies, or obscures any information in identifying the point of origin or the transmission path of the unsolicited commercial electronic mail message; or
 - Contains false or misleading information in the subject line.
 - Contains false or misleading information in the body of the message.
- Distribute software or any other system designed to falsify missing routing information identifying the point of origin or the transmission path of the commercial electronic mail message.

Summarily, the Act also:

- Authorizes the Department of Legal Affairs to bring an action for damages, or to seek declaratory or injunctive relief, or to impose a civil penalty for a violation of the prohibited activities outlined in the Act;
- Creates a cause of action for a person who receives an unsolicited commercial electronic mail message in violation of the Act's provisions;
- Provides that a violation of the Act's prohibited activities is also a violation of the Florida Deceptive and Unfair Trade Practices Act within the meaning of part II of chapter 501;
- Provides an exemption from liability for certain commercial electronic mail providers and wireless providers who transmit commercial electronic mail, and allows an interactive computer service provider to block transmission of a commercial electronic message it believes may be sent in violation of the Act's provisions;
- Provides that prevailing plaintiffs are entitled to:
 - An injunction to enjoin future violations for sending unsolicited false or misleading commercial electronic mail message.
 - Compensatory damages equal to actual damages to have resulted from the initiation of the unsolicited false or misleading commercial electronic mail message or liquidated damages of \$500 for each unsolicited false or misleading commercial electronic mail message.
 - Plaintiff's attorney's fees and other reasonably incurred litigation costs.
- Provides that any person outside this state who initiates or assists in the transmission of a commercial electronic mail message received in this state and who knows, or should have known, that the commercial electronic mail message will be received in this state, submits to the jurisdiction of this state;
- Provides that the Act's provisions do not interfere with the confidential status of certain information relating to intelligence or investigative information; and
- Provides that an action must be commenced within 4 years following the date of any prohibited activity.

Section 688.6075, F.S., provides that sending an unsolicited false or misleading commercial electronic mail message shall be considered an unfair and deceptive trade practice within the meaning of part II of ch. 501, F.S., and that in addition to any remedies or penalties set forth in ch. 501, F.S., a violator is subject to the penalties and remedies provided in this part. The remedies in this part are in addition to the remedies otherwise available for the same conduct under federal or state law.

According to the Department of Legal Affairs, two cases under the current Act were litigated in 2005, and at this time, there are other active investigations. Other complaints have been filed, but the Department of Legal Affairs has not been able to determine who sent the message; therefore, has not been able to take further action.

Proposed Legislation

HB 45 CS amends section 668.606, F.S., to provide that the Act does not create a cause of action or provide for criminal charges against an interactive computer service, customer premises equipment provider, communications services provider, or cable provider whose equipment is used to transport, handle, or retransmit an unsolicited false or misleading commercial electronic mail message.

- Currently, there are only civil remedies for sending an unsolicited false or misleading electronic mail message.³ HB 45 CS creates section 668.608, F.S., which provides it is a misdemeanor in the first degree to send an unsolicited false or misleading commercial electronic mail message, which is punishable by a fine of up to \$1,000⁴ or imprisonment of up to one year.⁵ It is a felony in the third degree if:
 - The volume of commercial electronic mail messages transmitted by the person exceeds 10,000 attempted recipients in any 24-hour period;
 - The volume of commercial electronic mail messages transmitted by the person exceeds 100,000 attempted recipients in any 30-day period;
 - The volume of commercial electronic messages transmitted by the person exceeds 1 million attempted recipients in any 1-year period;
 - The revenue generated from a specific commercial electronic mail message transmitted by the person exceeds \$1,000;
 - The total revenue generated from all commercial electronic mail messages transmitted by the person to any electronic mail message service provider or its subscribers exceed \$50,000;
 - The person knowingly hires, employs, uses, or permits any minor to assist in the transmission of a commercial electronic mail message in violation of section 668.603, F.S.;
 - The person commits a violation within 5 years of a previous conviction under this section.

A felony in the third degree is punishable by a fine of up to \$5,000,⁶ or imprisonment up to five years.⁷ Felony violations may also be punishable under the provisions for habitual felony offenders contained in section 775.084, F.S.

HB 45 CS provides that the remedies and criminal penalties are in addition to the remedies and criminal penalties otherwise available under federal or state law.

C. SECTION DIRECTORY:

- Section 1: Amends s. 668.606 (2), F.S., providing an exemption from criminal liability for certain carriers and equipment providers whose equipment transmits commercial electronic mail messages.
- Section 2: Amends s. 668.6075, relating to unfair and deceptive trade practices and renumbers s. 668.6075 (2), F.S., as s. 668.610, F.S., relating to cumulative remedies.
- Section 3: Creates s. 668.608, F.S., relating to criminal penalties.
- Section 4: This act shall take effect July 1, 2006, and shall apply to violations committed on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³ Section 668.606(1), F.S.

⁴ Section 775.083(1)(d), F.S.

⁵ Section 775.082(4)(a), F.S.

⁶ Section 775.083(1)(c), F.S.

⁷ Section 775.082(3)(d), F.S.

1. Revenues:

Indeterminate. HB 45 CS provides for fines as a penalty for a criminal violation of the Act. It is not known how many cases may be brought under the bill; thus, the revenue impact cannot be determined at this time.

2. Expenditures:

This bill creates an unranked third degree felony offense. The Criminal Justice Impact Conference met on February 28, 2006 and determined that this bill would have an insignificant impact on the prison bed population in the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. HB 45 CS provides for fines as a penalty for a criminal violation of the Act. It is not known how many cases may be brought under the bill; thus, the revenue impact cannot be determined at this time.

2. Expenditures:

The bill could result in increased demand for jail beds. Data are unavailable to estimate the impact. Based on data regarding civil actions under current law, the likely impact is insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

HB 45 CS creates section 668.608, F.S., to provide criminal penalties for sending unsolicited false or misleading commercial mail messages from a computer located in Florida or to an electronic mail address that is held by a resident of Florida. Constitutional challenges could be made based on the dormant commerce clause or the first amendment.

Dormant Commerce Clause

The commerce clause empowers Congress to regulate commerce among the several states.⁸ "This affirmative grant of authority to Congress also encompasses an implicit or dormant limitation on the authority of the states to enact legislation affecting interstate commerce."⁹ The aspect of the commerce

⁸ See U.S. Const., art. I, § 8, cl. 3.

⁹ Healy v. The Beer Institute, 491 U.S. 324 (1989).

clause which operates as an implied limitation upon state and local government authority is often referred to as the dormant commerce clause.¹⁰

In Pike v. Bruce Church Inc.,¹¹ a two prong test was announced to determine if a state statute violates the dormant commerce clause:

Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court held that the critical consideration is the overall effect of the statute on both local and interstate activity with respect to both parts of the Pike test.¹² The Supreme Court has invalidated statutes under the Pike test on the grounds that their extraterritorial effect renders them unconstitutional.

[T]he extraterritorial effects of state economic regulation stand at a minimum for the following proposition:

First, the "commerce clause . . . precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State" Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the commerce clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.¹³

"The Healy Court explained that the extraterritoriality principles detailed above are not a separated or distinct commerce clause analysis. Rather, they are simply a more detailed way of explaining the two-part test established in Pike and clarified in Brown-Forman."¹⁴

Under the first prong of Pike, section 668.603, F.S., appears to apply evenhandedly to in-state and out-of-state transmitters of unsolicited false or misleading commercial electronic mail. "A *person* may not . . . transmi[t] . . . an unsolicited commercial electronic mail message from a computer located in this state or to an electronic mail address that is held by a resident of this state. . . ."¹⁵ Thus, section 668.603 applies to residents of Florida as well as residents of other states.

Under the second prong of Pike, the local benefit of section 668.603 is balanced against the alleged burden on interstate commerce.

¹⁰ MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); citing Bd. of Trs. of the Employees' Ret. Sys. of Baltimore City v. Mayor and City Council of Baltimore, 317 Md. 72 at 131 (1989).

¹¹ 397 U.S. 137 (1970).

¹² See Brown-Forman Distillers Corp. v. N.Y. State Liquor Authority, 476 U.S. 573 at 579 (1986).

¹³ Healy at 336-37; see also MaryCle, at 15.

¹⁴ Id.

¹⁵ Section 668.603 (1), F.S.

Virtually identical statutes to section 668.608, F.S., pertaining to unsolicited false or misleading commercial electronic mail, have been examined by other courts under the dormant commerce clause and found to be constitutional.¹⁶

In Heckel, the court held that there was no sweeping extraterritorial effect that would outweigh the local benefits of the Act because the statute regulates only those emails directed to a Washington resident or sent from a computer located within Washington.¹⁷

In MaryCle, the court held that a Maryland statute was facially neutral because it applies to all email advertisers, regardless of their geographic location. It does not discriminate against out-of-state senders.¹⁸

In Ferguson, the court held that a California statute did not violate the commerce clause because the only burden on interstate commerce is that the email be truthful and non-deceptive email.¹⁹

Similarly, the local benefit of section 668.603 is to protect the public and legitimate business from deceptive and unsolicited commercial electronic mail²⁰, and the only burden imposed is sending truthful and non-deceptive email.

First Amendment

In Central Hudson Gas & Electric Corp. v. Public Service Comm. of New York,²¹ the Supreme Court articulated a four part test for evaluating the constitutionality of a content-neutral regulation of commercial speech:

First, the court must determine whether the speech is lawful and not misleading, otherwise it is outside the First Amendment's protection. If the speech is neither misleading or unlawful, then the court must ascertain whether the government has asserted a substantial interest. If the government has asserted a substantial interest, then a court must evaluate whether the regulation directly advances the asserted governmental interest and whether it is more extensive than necessary to serve that interest.²²

Here, if the content of the electronic mail communication is unlawful or misleading, then under Central Hudson it is outside the protection of the first amendment. However, if the content of the electronic mail communication is not unlawful or misleading, then the state could assert its substantial interest is protecting the public from deceptive and unsolicited commercial electronic mail.²³ A court would then evaluate whether section 668.608, F.S., is the least restrictive means in advancing Florida's interest in protecting its citizens.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹⁶ See State v. Heckel, 24 P.3d 404 (Wash 2001); MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); Ferguson v. Friendfinders, Inc., 94 Cal.App.4th 1255 (1st Dist. 2002).

¹⁷ Heckel, at 412-13.

¹⁸ MaryCle, at 19.

¹⁹ Ferguson, at 1265.

²⁰ See section 668.601, F.S.

²¹ 447 U.S. 557 (1980).

²² White Buffalo Ventures, LLC. v. The University of Texas, 2004 WL 1854168 (W.D. Tex. 2004).

²³ See section 668.601, F.S.

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 10, 2006, the Utilities & Telecommunications passed HB 45 with one amendment. The amendment provides that a customer premise equipment provider is immune from criminal penalties. Additionally, the amendment changed "telephone company" to "communications services provider" to ensure consistency.

HB 45

2006
CS

CHAMBER ACTION

The Utilities & Telecommunications Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to false or misleading electronic mail; amending s. 668.606, F.S.; providing an exemption from criminal liability for certain carriers and equipment providers whose equipment transmits commercial electronic mail messages that violate s. 668.603, F.S., which prohibits specified actions relating to transmission of false or misleading unsolicited commercial electronic mail messages; amending s. 668.6075, F.S., and renumbering and amending subsection (2) thereof as s. 668.610, F.S.; providing that remedies and penalties under the Electronic Mail Communications Act are cumulative; creating s. 668.608, F.S.; providing criminal penalties for violations of s. 668.603, F.S., which prohibits specified actions relating to transmission of false or misleading unsolicited commercial electronic mail messages; providing applicability; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 668.606, Florida Statutes, is amended to read:

668.606 Civil remedies; immunity.--

(2) This part does not create a cause of action or provide for criminal charges against an interactive computer service, customer premise equipment provider, communications services provider ~~telephone company~~, or cable provider whose equipment is used to transport, handle, or retransmit a commercial electronic mail message that violates s. 668.603.

Section 2. Section 668.6075, Florida Statutes, is amended, and subsection (2) of that section is renumbered as section 668.610, Florida Statutes, and amended to read:

668.6075 Unfair and deceptive trade practices ~~Violations of s. 668.603.~~--

~~(1)~~ A violation of s. 668.603 shall be deemed an unfair and deceptive trade practice within the meaning of part II of chapter 501. In addition to any remedies or penalties set forth in that part, a violator shall be subject to the penalties and remedies provided for in this part.

668.610 Cumulative remedies.--

~~(2)~~ The remedies and criminal penalties of this part are in addition to remedies and criminal penalties otherwise available for the same conduct under federal or state law.

Section 3. Section 668.608, Florida Statutes, is created to read:

668.608 Criminal violations.--

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(1) Except as provided in subsection (2), any person who violates s. 668.603 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who violates s. 668.603 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(a) The volume of commercial electronic mail messages transmitted by the person exceeds 10,000 attempted recipients in any 24-hour period;

(b) The volume of commercial electronic mail messages transmitted by the person exceeds 100,000 attempted recipients in any 30-day period;

(c) The volume of commercial electronic mail messages transmitted by the person exceeds 1 million attempted recipients in any 1-year period;

(d) The revenue generated from a specific commercial electronic mail message transmitted by the person exceeds \$1,000;

(e) The total revenue generated from all commercial electronic mail messages transmitted by the person to any electronic mail message service provider or its subscribers exceeds \$50,000;

(f) The person knowingly hires, employs, uses, or permits any minor to assist in the transmission of a commercial electronic mail message in violation of s. 668.603; or

(g) The person commits a violation otherwise punishable under subsection (1) within a 5-year period after a previous conviction under this section.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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80 Section 4. This act shall take effect July 1, 2006, and
81 shall apply to violations committed on or after that date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0045

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Criminal Justice Appropriations
Committee

Representative Porth offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Any agency, as defined in s. 119.011, Florida
Statutes, or legislative entity that operates a website and uses
electronic mail shall post the following statement in a
conspicuous location on its website:

Under Florida law, e-mail addresses are public records. If
you do not want your e-mail address released in response to
a public-records request, do not send electronic mail to
this entity. Instead, contact this office by phone or in
writing.

Section 2. Subsection (2) of section 668.606, Florida
Statutes, is amended to read:

668.606 Civil remedies; immunity.--

(2) This part does not create a cause of action or provide
for criminal charges against an interactive computer service,
customer premise equipment provider, communications services

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

provider telephone company, or cable provider whose equipment is used to transport, handle, or retransmit a commercial electronic mail message that violates s. 668.603.

Section 3. Section 668.6075, Florida Statutes, is amended, and subsection (2) of that section is renumbered as section 668.610, Florida Statutes, and amended to read:

668.6075 Unfair and deceptive trade practices ~~Violations of s. 668.603.--~~

~~(1)~~ A violation of s. 668.603 shall be deemed an unfair and deceptive trade practice within the meaning of part II of chapter 501. In addition to any remedies or penalties set forth in that part, a violator shall be subject to the penalties and remedies provided for in this part.

668.610 Cumulative remedies.--

~~(2)~~ The remedies and criminal penalties of this part are in addition to remedies and criminal penalties otherwise available for the same conduct under federal or state law.

Section 4. Section 668.608, Florida Statutes, is created to read:

668.608 Criminal violations.--

(1) Except as provided in subsection (2), any person who violates s. 668.603 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who violates s. 668.603 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(a) The volume of commercial electronic mail messages transmitted by the person exceeds 2,500 attempted recipients in any 24-hour period;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

(b) The volume of commercial electronic mail messages transmitted by the person exceeds 25,000 attempted recipients in any 30-day period;

(c) The volume of commercial electronic mail messages transmitted by the person exceeds 250,000 attempted recipients in any 1-year period;

(d) The revenue generated from a specific commercial electronic mail message transmitted by the person exceeds \$1,000;

(e) The total revenue generated from all commercial electronic mail messages transmitted by the person to any electronic mail message service provider or its subscribers exceeds \$50,000;

(f) The person knowingly hires, employs, uses, or permits any minor to assist in the transmission of a commercial electronic mail message in violation of s. 668.603; or

(g) The person commits a violation otherwise punishable under subsection (1) within a 5-year period after a previous conviction under this section.

Section 5. Part IV of chapter 668, Florida Statutes, consisting of sections 668.701, 668.702, 668.703, 668.704, and 668.705, Florida Statutes, is created to read:

PART IV

FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION

668.701 Short title.--This part may be cited as the "Anti-Phishing Act."

668.702 Definitions.--As used in this part, the term:

(1) "Department" means the Department of Legal Affairs.

(2) "Electronic mail address" has the same meaning as provided in s. 668.602.

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83 (3) "Electronic mail message" has the same meaning as
84 provided in s. 668.602.

85 (4) "Identifying information" has the same meaning as the
86 term "personal identification information" as defined in s.
87 817.568(1).

88 (5) "Internet domain name" has the same meaning as
89 provided in s. 668.602.

90 (6) "Web page" means a location that has a single uniform
91 resource locator (URL) with respect to the World Wide Web or
92 another location that can be accessed on the Internet.

93 668.703 Prohibited acts.--

94 (1) A person with an intent to engage in conduct involving
95 the fraudulent use or possession of another person's identifying
96 information may not represent oneself, directly or by
97 implication, to be another person without the authority or
98 approval of such other person through the use of a web page or
99 Internet domain name and use that web page, Internet domain
100 name, or a link to that web page or domain name or another site
101 on the Internet to induce, request, or solicit a resident of
102 this state to provide identifying information.

103 (2) A person with an intent to engage in conduct involving
104 the fraudulent use or possession of identifying information may
105 not send or cause to be sent to an electronic mail address held
106 by a resident of this state an electronic mail message that is
107 falsely represented as being sent by another person without the
108 authority or approval of such other person, refers or links the
109 recipient of the message to a web page, and directly or
110 indirectly induces, requests, or solicits the recipient of the
111 electronic mail message to provide identifying information.

112 668.704 Remedies.--

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113 (1) The following persons may bring a civil action against
114 a person who violates this part:

115 (a) A person engaged in the business of providing Internet
116 access service to the public who is adversely affected by the
117 violation.

118 (b) A financial institution as defined in s. 655.005(1)
119 that is adversely affected by the violation.

120 (c) An owner of a web page, trademark, or service mark who
121 is adversely affected by the violation.

122 (d) The Attorney General.

123 (2) A person bringing an action under this section may:

124 (a) Obtain injunctive relief to restrain the violator from
125 continuing the violation.

126 (b) Recover damages in an amount equal to the greater of:

127 1. Actual damages arising from the violation; or

128 2. The sum of \$5,000 for each violation of the same
129 nature.

130 (3) The court may increase an award of actual damages in
131 an action brought under this section to an amount not to exceed
132 three times the actual damages sustained if the court finds that
133 the violations have occurred with a frequency as to constitute a
134 pattern or practice.

135 (4) For purposes of this section, violations are of the
136 same nature if the violations consist of the same course of
137 conduct or action, regardless of the number of times the conduct
138 or action occurred.

139 (5) A plaintiff who prevails in an action filed under this
140 section is entitled to recover reasonable attorney's fees and
141 court costs.

142 (6) By committing a violation under this part, the
143 violator submits personally to the jurisdiction of the courts of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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144 this state. This section does not preclude other methods of
145 obtaining jurisdiction over a person who commits a violation
146 under this part.

147 (7) An action under this part may be brought in any court
148 of competent jurisdiction to enforce such rights and to recover
149 damages as stated in this part.

150 (8) The venue for a civil action brought under this
151 section shall be the county in which the plaintiff resides or in
152 any county in which any part of the alleged violation of this
153 part took place, regardless of whether the defendant was ever
154 actually present in that county. A civil action filed under this
155 section must be brought within 3 years after the violation
156 occurred.

157 (9) The remedies available under this section are in
158 addition to remedies otherwise available for the same conduct
159 under federal or state law.

160 (10) Any moneys received by the Attorney General for
161 attorney's fees and costs of investigation or litigation in
162 proceedings brought under this section shall be deposited as
163 received into the Legal Affairs Revolving Trust Fund.

164 (11) Any moneys received by the Attorney General that are
165 not for attorney's fees and costs of investigation or litigation
166 or used for reimbursing persons found under this part to be
167 damaged shall accrue to the state and be deposited as received
168 into the Legal Affairs Revolving Trust Fund.

169 (12) The Department of Legal Affairs may adopt rules
170 pursuant to ss. 120.536(1) and 120.54 to implement the
171 provisions of this part.

172 668.705 Exemptions.--

173 (1) This part does not apply to a telecommunications
174 provider's or Internet service provider's good faith

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

transmission or routing of, or intermediate temporary storing or
caching of, identifying information.

(2) A provider of an interactive computer service is not
liable under the laws of this state for removing or disabling
access to content that resides on an Internet website or other
online location controlled or operated by such provider if such
provider believes in good faith that the content is used to
engage in a violation of this part.

Section 6. This act shall take effect July 1, 2006, and
shall apply to violations committed on or after that date.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to electronic communication; requiring
certain governmental entities to post a notice on their
websites that electronic mail addresses sent to them are
subject to release to the public; amending s. 668.606,
F.S.; providing an exemption from criminal liability for
certain carriers and equipment providers whose equipment
transmits commercial electronic mail messages that violate
s. 668.603, F.S., which prohibits specified actions
relating to transmission of false or misleading
unsolicited commercial electronic mail messages; amending
s. 668.6075, F.S., and renumbering and amending subsection
(2) thereof as s. 668.610, F.S.; providing that remedies
and penalties under the Electronic Mail Communications Act
are cumulative; creating s. 668.608, F.S.; providing
criminal penalties for violations of s. 668.603, F.S.,
which prohibits specified actions relating to transmission
of false or misleading unsolicited commercial electronic

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

206 mail messages; providing applicability; creating part IV
207 of ch. 668, F.S.; providing a short title; providing
208 definitions; prohibiting certain acts relating to
209 fraudulent use or possession of identifying information;
210 authorizing civil actions for violations; providing for
211 injunctive relief and damages; authorizing courts to
212 increase awards of actual damages under certain
213 circumstances; providing for recovery of attorney's fees
214 and court costs; providing for jurisdiction and venue;
215 providing for deposit of certain moneys received by the
216 Attorney General into the Legal Affairs Revolving Trust
217 Fund; authorizing the Department of Legal Affairs to adopt
218 rules; providing for nonapplication to certain entities'
219 good faith handling of identifying information; specifying
220 the absence of liability for certain actions taken to
221 prevent certain violations; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1239

Child Abuse

SPONSOR(S): Detert

TIED BILLS: None.

IDEN./SIM. BILLS: SB 2266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
2) Future of Florida's Families Committee	6 Y, 0 N	Preston	Collins
3) Criminal Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute, relating to dependency, that defines child abuse, and specifically defines, what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines "child abuse" (simple child abuse) and "aggravated child abuse," but does not specifically address corporal punishment.

Courts have looked to the above statutes in an attempt to determine when corporal discipline rises to the level of criminal child abuse. The courts' analyses and opinions have resulted in an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *simple* (or aggravated) criminal abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both civil and simple child abuse.

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury.

There is no fiscal impact anticipated to either local or state governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term “inappropriate or excessively harsh corporal discipline.”

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Courts and legislative bodies have repeatedly recognized the difficulty in delineating a precise line between permissible corporal punishment and prohibited child abuse.¹ However, as stated by the Florida Supreme Court, the task of doing so is principally a legislative function.² Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute that defines child abuse and specifically defines what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines child abuse, but does not specifically address corporal punishment.

Chapter 39, F.S. – Civil Child Abuse

Chapter 39, F.S., a *civil* statute, designates certain types of excessive corporal punishment as *civil* child abuse.³ Section 39.01, F.S., provides that “corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- Sprains, dislocations, or cartilage damage;
- Bone or skull fractures;
- Brain or spinal cord damage;
- Intracranial hemorrhage or injury to other internal organs;
- Asphyxiation, suffocation, or drowning;
- Injury resulting from the use of a deadly weapon;
- Burns or scalding;
- Cuts, lacerations, punctures, or bites;
- Permanent or temporary disfigurement;
- Permanent or temporary loss or impairment of a body part or function; or
- Significant bruises or welts.”

Under Chapter 39, F.S., protective investigations and dependency proceedings could result if there is a report that a child has been abused. A person who is found to have abused a child under Ch. 39, F.S., could also be charged with contributing to the dependency of a minor pursuant to s. 827.04, F.S.

Section 827.03(1), F.S. – Criminal Child Abuse

Section 827.03(1), F.S., a *criminal* statute, defines child abuse as:

- (a) Intentional infliction of physical or mental injury upon a child;

¹ See, e.g., *State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001); *Corsen v. State*, 784 (So.2d 535 (Fla. 5th DCA 2001); *Moakley v. State*, 547 So.2d 1246 (Fla. 5th DCA 1989).

² *Raford v. State*, 828 So.2d 1012 (Fla. 2002).

³ *Id.*

- (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child *without* causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.⁴ This type of child abuse is often referred to as “simple” child abuse.

Section 827.03(2), F.S., defines *aggravated* child abuse, and provides, in part, that aggravated child abuse occurs when someone knowingly and willfully abuses a child and in doing so actually *causes* great bodily harm, permanent disability, or permanent disfigurement to a child.

Case law - Relationship Between Chapter 39 and Section 827.03, F.S.

It might appear from the plain language of the statutes that a person who commits excessive corporal discipline, as defined by Ch. 39, F.S., could also be charged with a crime under s. 827.03, F.S. (either simple or aggravated depending on how serious the injury was). The courts, however, have used a different analysis.

In 2002, the Florida Supreme Court held that there is no parental privilege barring prosecution for simple child abuse under s. 827.03(1), F.S.⁵ In its decision, the court discussed corporal punishment and when such punishment rises to the level of simple child abuse. After reviewing the legislative histories of Ch. 39 and s. 827.03, F.S., the court stated that a parent can be charged with *simple* child abuse for excessive corporal punishment that falls between the level of abuse required to establish *civil* child abuse and that required to prove *aggravated* child abuse.⁶ The court stated that if a parent commits *civil* child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not rise to the level of aggravated child abuse to be treated as simple child abuse.⁷

In *King v. State*, 908 So.2d 954 (Fla. 2nd DCA 2005), the court cited the *Raford* case and held that a school administrator's spanking that resulted in significant bruises or welts did not rise to the level of simple child abuse, but instead fell under the category of *civil* child abuse. The court noted, however, that their holding contradicted the plain language of s. 827.03(1), F.S. (defining child abuse as the intentional infliction of physical injury upon a child without causing great bodily harm, permanent disability, or permanent disfigurement). As such, the *King* court certified the following question to the Florida Supreme Court:

“Whether a spanking administered as corporal punishment that results in significant bruises or welts may constitute felony child abuse under Section 827.03(1), Florida Statutes.”

Despite the seeming incongruity in the law, the Florida Supreme Court denied review.⁸

Effect of the Case law

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, or s. 775.084, F.S.

⁵ *Raford v. State*, 828 So.2d 1012, 1020 (Fla. 2002)

⁶ *Id.* See also, *State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001) (If a parent can be charged with civil child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not result in permanent disability or permanent disfigurement to be treated as simple child abuse.).

⁷ *Id.* at 1019.

⁸ *State v. King*, 908 So.2d 1058 (Fla. 2005).

In essence, the courts appear to have created an “either or” approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it’s *simple* (or aggravated) criminal abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both civil *and* simple child abuse. This is despite the fact that the list of injuries that constitute excessive corporal discipline contained in Ch. 39, F.S., encompasses a wide range of injuries (e.g., injuries ranging from cuts and sprains to skull fractures, spinal cord damage, and permanent loss of a body part). If an act does not rise to the level of *simple* child abuse simply because it qualifies as *civil* child abuse, it is unclear when, if ever, a court will find that excessive corporal discipline qualifies as simple child abuse.

Effect of the Bill

This bill amends the definition of the term “child abuse” in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term “inappropriate or excessively harsh corporal discipline” as “an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury.”⁹

The bill also reenacts ss. 775.082(9)(a), 787.04(5), and 901.15(8), F.S., to incorporate the amendments to s. 827.03, F.S., in references thereto.

C. SECTION DIRECTORY:

Section 1. Amends s. 827.03, F.S., revising the definition of the term “child abuse” to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver; providing a penalty; and defining “inappropriate or excessively harsh corporal discipline.”

Section 2. Reenacts s. 775.082(9)(a), F.S., relating to mandatory minimum sentences for certain reoffenders previously released from prison, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 3. Reenacts s. 787.04(5), F.S., relating to removing minors from the state or concealing minors contrary to state agency order or court order, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 4. Reenacts s. 901.15(8), F.S., relating to when an arrest by an officer without a warrant is lawful, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 5. Provides for an effective date of July 1, 2006.

⁹ This definition largely mirrors the language in Ch. 39, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference predicted an insignificant impact on the inmate population as a result of the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

In *Marshall v. Reams*, 32 Fla. 499, 14 So. 95 (1893), the Florida Supreme Court recognized the "right of a parent, or one standing in loco parentis, to moderately chastise for correction a child under his or her control and authority." This bill would not remove this right from parents. As stated in *Raford*, "a parent may assert as an affirmative defense his or her parental right to administer 'reasonable' or 'nonexcessive' corporal punishment, i.e., a typical spanking, in a prosecution for simple child abuse."¹⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁰ *Raford v. State*, 828 So.2d 1012, 1020.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to child abuse; amending s. 827.03, F.S.;
revising the definition of the term "child abuse" to
include inappropriate or excessively harsh discipline of a
child by a parent, legal custodian, or caregiver;
providing a criminal penalty; defining the term
"inappropriate or excessively harsh corporal discipline";
reenacting ss. 775.082(9)(a), 787.04(5), and 901.15(8),
F.S., relating to mandatory minimum sentences for certain
reoffenders previously released from prison, removing
minors from the state or concealing minors contrary to
state agency order or court order, and when arrest by an
officer without a warrant is lawful, to incorporate the
amendment to s. 827.03, F.S., in references thereto;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 827.03, Florida
Statutes, is amended, and subsection (5) is added to that
section, to read:

827.03 Abuse, aggravated abuse, and neglect of a child;
penalties.--

(1) "Child abuse" means:

(a) Intentional infliction of physical or mental injury
upon a child;

(b) An intentional act that could reasonably be expected
to result in physical or mental injury to a child; ~~or~~

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(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child; ~~or-~~

(d) Inappropriate or excessively harsh corporal discipline of a child by a parent, legal custodian, or caregiver.

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) For purposes of this section, "inappropriate or excessively harsh corporal discipline" means an act of discipline that results or could reasonably be expected to result in any of the following or other similar injuries:

(a) Sprains, dislocations, or cartilage damage.

(b) Bone or skull fractures.

(c) Brain or spinal cord damage.

(d) Intracranial hemorrhage or injury to other internal organs.

(e) Asphyxiation, suffocation, or drowning.

(f) Injury resulting from the use of a deadly weapon.

(g) Burns or scalding.

(h) Cuts, lacerations, punctures, or bites.

(i) Disfigurement.

(j) Loss or impairment of a body part or function.

(k) Significant bruises or welts.

(l) Mental injury, as defined in s. 39.01.

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Section 2. For the purpose of incorporating the amendment made by this act to section 827.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (9) of section 775.082, Florida Statutes, is reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.--

(9)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:

- a. Treason;
- b. Murder;
- c. Manslaughter;
- d. Sexual battery;
- e. Carjacking;
- f. Home-invasion robbery;
- g. Robbery;
- h. Arson;
- i. Kidnapping;
- j. Aggravated assault with a deadly weapon;
- k. Aggravated battery;
- l. Aggravated stalking;
- m. Aircraft piracy;
- n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- o. Any felony that involves the use or threat of physical force or violence against an individual;
- p. Armed burglary;

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83 q. Burglary of a dwelling or burglary of an occupied
84 structure; or

85 r. Any felony violation of s. 790.07, s. 800.04, s.
86 827.03, or s. 827.071;

87
88 within 3 years after being released from a state correctional
89 facility operated by the Department of Corrections or a private
90 vendor or within 3 years after being released from a
91 correctional institution of another state, the District of
92 Columbia, the United States, any possession or territory of the
93 United States, or any foreign jurisdiction, following
94 incarceration for an offense for which the sentence is
95 punishable by more than 1 year in this state.

96 2. "Prison releasee reoffender" also means any defendant
97 who commits or attempts to commit any offense listed in sub-
98 subparagraphs (a)1.a.-r. while the defendant was serving a
99 prison sentence or on escape status from a state correctional
100 facility operated by the Department of Corrections or a private
101 vendor or while the defendant was on escape status from a
102 correctional institution of another state, the District of
103 Columbia, the United States, any possession or territory of the
104 United States, or any foreign jurisdiction, following
105 incarceration for an offense for which the sentence is
106 punishable by more than 1 year in this state.

107 3. If the state attorney determines that a defendant is a
108 prison releasee reoffender as defined in subparagraph 1., the
109 state attorney may seek to have the court sentence the defendant
110 as a prison releasee reoffender. Upon proof from the state

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111 attorney that establishes by a preponderance of the evidence
112 that a defendant is a prison releasee reoffender as defined in
113 this section, such defendant is not eligible for sentencing
114 under the sentencing guidelines and must be sentenced as
115 follows:

116 a. For a felony punishable by life, by a term of
117 imprisonment for life;

118 b. For a felony of the first degree, by a term of
119 imprisonment of 30 years;

120 c. For a felony of the second degree, by a term of
121 imprisonment of 15 years; and

122 d. For a felony of the third degree, by a term of
123 imprisonment of 5 years.

124 Section 3. For the purpose of incorporating the amendment
125 made by this act to section 827.03, Florida Statutes, in a
126 reference thereto, subsection (5) of section 787.04, Florida
127 Statutes, is reenacted to read:

128 787.04 Removing minors from state or concealing minors
129 contrary to state agency order or court order.--

130 (5) It is a defense under this section that a person who
131 leads, takes, entices, or removes a minor beyond the limits of
132 the state reasonably believes that his or her action was
133 necessary to protect the minor from child abuse as defined in s.
134 827.03.

135 Section 4. For the purpose of incorporating the amendment
136 made by this act to section 827.03, Florida Statutes, in a
137 reference thereto, subsection (8) of section 901.15, Florida
138 Statutes, is reenacted to read:

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139 901.15 When arrest by officer without warrant is
140 lawful.--A law enforcement officer may arrest a person without a
141 warrant when:

142 (8) There is probable cause to believe that the person has
143 committed child abuse, as defined in s. 827.03. The decision to
144 arrest shall not require consent of the victim or consideration
145 of the relationship of the parties. It is the public policy of
146 this state to protect abused children by strongly encouraging
147 the arrest and prosecution of persons who commit child abuse. A
148 law enforcement officer who acts in good faith and exercises due
149 care in making an arrest under this subsection is immune from
150 civil liability that otherwise might result by reason of his or
151 her action.

152 Section 5. This act shall take effect July 1, 2006.